

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY LAVON RICHARDSON,

Defendant-Appellant.

UNPUBLISHED

October 14, 2004

No. 248159

Wayne Circuit Court

LC No. 02-015221-01

Before: Griffin, P.J., and Saad and O'Connell, JJ.

MEMORANDUM.

Defendant was charged with first-degree premeditated murder. MCL 750.316. Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317, for which he was sentenced to thirty-five to fifty-five years in prison. Defendant appeals his conviction as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the trial court erred in instructing the jury on determining state of mind as provided in CJI2d 16.21. Because defense counsel specifically stated that he had no objections to the instructions given, the issue has been waived. *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2002); *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001). In any event, the instruction was not improper because it left it to the jury to determine whether to draw an inference that defendant acted with the intent to kill from his use of a dangerous weapon. It did not direct the jury that defendant was presumed to have an intent to kill or that it must infer that he had an intent to kill from the fact that he used a dangerous weapon.

Defendant's argument that counsel was ineffective for failing to object to the instructions has not been preserved for appeal because it was not raised in the statement of questions presented. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). Nevertheless, because the court's instruction on inferring intent was not erroneous, counsel was not ineffective for failing to object. *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

Affirmed.

/s/ Richard Allen Griffin

/s/ Henry William Saad

/s/ Peter D. O'Connell